* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on February 08,2007
Date of decision : April 18, 2007

\+ CRL.M.C. 5502/2005, CRL.M.C. 5503/2005, CRL.M.C. 5504/2005

NAVEEN SAINI & ORS. ..... Petitioner
Through Mr. Abhay Singh Kushwaha, Advocate

versus

STATE ..... Respondent
Through Mr. O.P.Saxena, Advocate
Ms. Banamali Shukla for respondent No.2

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1.. Whether reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

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MR. JUSTICE S. RAVINDRA BHAT

1. The petitioners invoke revisional jurisdiction of this court, so far as the condition directing pre-deposit of Rs.50,000/-, as a condition for grant of bail, was made by the learned Additional Sessions Judge.

2. The petitioners along with other co-accused, allegedly committed offences under Section 498-A/464/34 IPC. The first information report, was lodged in P.S. Tilak

Nagar, New Delhi at the instance of the complainant, Komal Saini, the first petitioner's wife. She had alleged acts of cruelty and complained that the petitioners appropriated valuable items, jewellery and ornaments.

3. The petitioners had moved an application for bail. The trial court had directed that the petitioner release of the husband on interim bail, upon his furnishing personal bond in the sum of Rs.20,000/- with one surety of that amount. The matter was again listed on 21.10.2005, when the trial court, by the impugned order, made the following directions :

> *"21/10/05*
> *Present : Sh. A.S.Khuswaha counsel for the applicant*
> *Complainant with counsel*
> *Addl. P.P. for State with IO*
> *Applicants are mother in law and brother in law of the complainant Komal Saini who get married to Naveen Saini who is in custody.*
> *Naveen Saini has been directed to be released on interim bail on his furnishing Personal Bond in the sum of Rs.20,000/- with one surety in the like amount to the satisfaction of concerned MM/Duty MM/Link MM for a period of one month from today and subject to the condition that without prejudice to the rights and contentions of the parties accused will bring a sum of Rs.50,000/- and will hand over the same to the IO who will release the same to his estranged wife.*
> *In view of this position both these applicants are also directed to be released on interim bail in the event of their arrest on their furnishing a personal bond in the sum of Rs.15,000/- each with one surety in the like amount each to the satisfaction of IO/SHO concerned. However, they shall join the investigation as and when directed by the IO.*
> *Matter be put up for further consideration on 21/11/05."*

4. It is argued by Mr. A.S.Kushwaha that the condition imposed by the trial court i.e. deposit of Rs.50,000/-, cannot be sustained. Counsel relied upon the decision of this Court in *Shri Vishnu Sharma and others Vs. NCT of Delhi, 2003 (3) JCC 1524* as well as the judgment of the Supreme Court dated 11.7.2005 in *Criminal Appeal No.805/2005 (Shyam Singh Vs. State*).

5. The Supreme Court in *Shyam Singh's case (*supra) held that a court can grant or refuse bail but to assume that an offence has been committed, even at the stage of granting bail and directing payment of any amounts would be unwarranted and onerous. In *Vishnu Sharma's case* (supra), this court had observed that bail applications cannot be converted into suits for recovery of dowry articles, or civil suits. The court is required to see the various grounds necessary for the purpose of enlarging or refusing to enlarge the applicant on bail, detailed in Section 437 (3) Cr. P.C.

6. Learned counsel for the respondents opposed the petition and submitted that the direction to pay amounts is justified in the circumstances of the case.

7. The factual narrative discloses that the trial court on being approached was initially of the opinion that interim bail was justified; the applicants were enlarged on interim bail subject to personal bond and one surety. However, at the stage of disposal of the application, the court directed the payment of Rs.50,000/- although as a without prejudice payment.

8. Section 437(3) Cr. P.C. empowers the court to enlarge an applicant, accused of suspected commission of offence punishable with imprisonment of maximum ten

years or more under the IPC, etc. to impose such conditions which it may consider necessary, for securing his presence and attendance in accordance with the condition of a bond and/or to ensure that such accused does not commit offence akin to what he is accused of. It has been universally recognized that such conditions ought not to be onerous, if the court is otherwise satisfied that the accused/applicant is entitled to bail. A significant exception drawn by the court is that if an accused/applicant, volunteers to deposit some amounts or undertakes to do so, to express his *bona fides* or assure the court about his continued willingness to appear in the proceedings, inclusion of such undertaking and its incorporation as a condition for release, cannot be found fault with.

9. In this case the impugned order, facially, does not record any voluntariness or willingness by the applicants to deposit any, much less the sum of Rs. 50,000/-. Therefore, keeping in mind the above principles and the judgment of the Supreme Court as well as that of this Court in *Vishnu Sharma's case* (supra), I am of the opinion that the petition has to succeed.

10. For the above reasons, the impugned order, so far as it requires depositing of Rs.50,000/-, as a condition for bail, is hereby set aside. The petition is allowed in the above terms.

(S.RAVINDRA BHAT)
JUDGE

APRIL 18, 2007
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